

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: June 17, 2004¹

Opposition No. 91115198

THE VERMONT TEDDY BEAR
COMPANY, INC.

v.

BUILD-A-BEAR WORKSHOP, LLC

Thomas W. Wellington
Interlocutory Attorney,
Trademark Trial and Appeal Board:

On June 15, 2004, applicant filed a motion for summary judgment. Also, on the same date, applicant's counsel contacted the Board attorney (identified above) responsible for resolving interlocutory matters in this case. Counsel for applicant inquired regarding the suspension of proceedings pending resolution of the summary judgment motion.

On June 16, 2004, at 4:00 am EDT, the Board held a telephone conference between Jay Spiegel, Esq., counsel for opposer and Anthony Martin, Esq., counsel for applicant, and the Board attorney identified above. The Board presumes familiarity with the issues and arguments presented during

¹ A copy of this order is also being sent via facsimile to both parties.

the telephone conference and does not provide a complete recitation of the contentions of each party made during the telephone conference.

During the telephone conference, counsel for the parties acknowledged that opposer served notice for a Fed. R. Civ. P. 30(b)(6) deposition on applicant approximately two months ago (on or about May 14, 2004) and that the deposition is scheduled for June 22, 2004. During the telephone conference, opposer essentially requested that the Board immediately suspend proceedings, including the Rule 30(b)(6) deposition. Applicant, on the other hand, requested that it be allowed to take the deposition at the scheduled date and place, before any suspension of proceedings. Applicant also stated, in the alternative, that it was prepared to file a motion under Fed. R. Civ. P. 56(f) in an expedited manner.

The Board has reviewed the parties' arguments. The Board has also noted the questions of law and/or fact at issue in this proceeding for the purpose of serving the interest of judicial economy.

Based on the parties' arguments, **IT IS HEREBY ORDERED THAT:**

1. **Opposer is allowed until 3 pm (eastern time) on June 17, 2004 to file a motion pursuant to Fed. R. Civ. P. 56(f).** In lieu of a formal motion, the Board will accept an affidavit from opposer's counsel setting forth with specificity the areas of inquiry needed to obtain the information necessary to enable opposer to

respond to the motion for summary judgment. Opposer shall serve a courtesy copy of the motion on applicant by either fax or electronic mail.

2. If opposer files a Rule 56(f) motion within the time set forth in paragraph 2 above, applicant will be allowed an opportunity to respond during a telephone conference. The telephone conference shall include both parties and be conducted at applicant's convenience but no later than 1:00 pm (eastern time) on June 18, 2004. Applicant should contact the Board attorney (identified above) to schedule the telephone conference.
3. If opposer files a Rule 56(f) motion, the Board will expedite its determination and will render a decision by close of business on June 18, 2004. A copy of the Board's decision will be sent by fax to the parties.
4. **The parties shall otherwise remain prepared to attend the deposition as scheduled (on June 22, 2003) in the event the Board grants opposer's Rule 56(f) motion.**
5. Proceedings otherwise are suspended.

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